



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0285]

RIN 1625-AA87

Security Zone, Christina River, Newport, DE

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a security zone for the protection of persons under the protection of the United States Secret Service (USSS) as they transit by vehicle on the route 141 bridge over the Christina River near Newport, Delaware. The security zone will be enforced intermittently and only during times necessary to protect persons under the protection of the USSS as they transit over the bridge and will restrict vessel traffic while the zone is being enforced. Only vessels or people specifically authorized by the Captain of the Port, Delaware Bay, or designated representative, may enter or remain in the regulated area.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through May 17, 2021. For the purposes of enforcement, actual notice will be used from 2 pm on April 23, 2021 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0285 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Edmund Ofalt, Sector Delaware Bay, Waterways Management Division, U.S. Coast Guard; telephone 215–271–4814, e-mail Edmund.J.Ofalt@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard was not notified by the United States Secret Service of the visit with sufficient time to publish a NPRM prior to the arrival of persons under the protection of the USSS. Delay in promulgating this rule would be impracticable because a security zone is required to be in place by April 23, 2021, to protect these persons under the protection of the USSS in the vicinity of this waterway. The presence of these persons creates unique safety and security concerns.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the

Federal Register for the same reasons discussed above.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Delaware Bay (COTP) has determined that persons under the protection of the USSS transits starting April 23, 2021 present a potential target for terrorist acts, sabotage, or other subversive acts, accidents, or other causes of a similar nature. Due to the roadway passing over the Christina River, this security zone is necessary to protect these persons, the public, and the surrounding waterway.

IV. Discussion of the Rule

This rule establishes a temporary security zone from 2 pm on April 23, 2021, through 11:59 pm on May 17, 2021, on certain waters of the Christina River near Newport, Delaware. The security zone is bounded on the east by a line drawn from 39° 42.55' North Latitude (N), 075° 35.88' West Longitude (W), thence southerly to 39° 42.50' N, 075° 35.87' W proceeding from shoreline to shoreline on the Christina River in a westerly direction where it is bounded by the South James Street Bridge at 39° 42.63' N, 075° 36.53 W.

This zone will be enforced intermittently during the effective dates. Enforcement of this zone will be broadcast via Broadcast Notice to Mariners on VHF-FM marine channel 16, as well as actual notice via on scene Coast Guard Personnel.

No vessel or person will be permitted to enter or remain within this zone without permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the location, duration and time of year of the security zone. Vessel traffic on this portion of the Christina River is typically limited to recreational traffic. The zone will be enforced intermittently and broadcast via VHF-FM channel 16 allowing vessel traffic time to transit outside of enforcement times. The time of year of this security zone has limited recreational traffic due to weather and the potential presence of ice.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone which will be intermittently enforced over the course of approximately 24 days. It is categorically excluded from further review under paragraph L[60a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0285 to read as follows:

§ 165.T05-0285 Security Zone; Christina River, Newport, DE.

(a) Location. The following area is a security zone: All waters of the Christina River, from shoreline to shoreline bounded on the east by a line drawn from 39° 42.55' North Latitude (N), 075° 35.88' West Longitude (W), thence southerly to 39° 42.50' N, 075° 35.87' W thence along the Christina River in a westerly direction and bounded by the South James Street Bridge at 39° 42.63' N, 075° 36.53 W. These coordinates are based on North American Datum 83 (NAD83).

- (b) Definitions. As used in this section--

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Delaware Bay (COTP) to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or

loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of the regulations in this section.

Official patrol vessel means any Coast Guard, Coast Guard Auxiliary, State, or local law enforcement vessel assigned or approved by the COTP.

USSS protectee means any person for whom the United States Secret Service (USSS) requests implementation of a security zone in order to supplement protection of said person(s).

(c) Regulations. (1) In accordance with the general regulations contained in § 165.33, entry into or movement within this zone is prohibited unless authorized by the COTP, Sector Delaware Bay, or designated representative.

(2) Only vessels or people specifically authorized by the Captain of the Port, Delaware Bay, or designated representative, may enter or remain in the regulated area. To request permission to enter or remain in the regulated area contact the COTP or the COTP's representative on VHF-FM channel 13 or 16. Vessel operators and persons within the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. No person may swim upon or below the surface of the water of this security zone unless authorized by the COTP or his designated representative.

(3) Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light, or other means, the operator of the vessel shall proceed as directed. Failure to comply with lawful direction may result in expulsion from the regulated area, citation for failure to comply, or both.

(d) Enforcement. (1) This security zone is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through May 17, 2021. For the purposes of enforcement, actual notice will be used from 2 pm on April 23, 2021 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(2) This security zone will be enforced with actual notice by the U.S. Coast Guard representatives on scene, as well as other methods listed in § 165.7. The Coast Guard will enforce the security zone created by this section only when it is necessary for the protection of persons under the protection of the USSS traveling across the route 141 bridge in Newport, Delaware. The U.S. Coast Guard may be additionally assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

Dated: April 23, 2021.

Leon McClain, Jr.,
Captain, U. S. Coast Guard,
Acting Captain of the Port, Delaware Bay.

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